

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
)	Case No. 12-22602
DICKINSON THEATRES, INC.,)	
a Kansas corporation,)	Chapter 11
)	
Debtor.)	

**DEBTOR'S MOTION FOR THE ENTRY OF AN ORDER, PURSUANT
TO SECTIONS 105(a) AND 554 OF THE BANKRUPTCY CODE, AUTHORIZING
THE DEBTOR TO ABANDON ITS RIGHT, TITLE, AND INTEREST IN, AND TO,
CERTAIN REAL PROPERTY AND ALL IMPROVEMENTS LOCATED THEREON IN
FAVOR OF FIRST COMMUNITY BANK**

Dickinson Theatres, Inc., debtor and debtor-in-possession in the above-captioned case (the "Debtor") by and through its undersigned counsel, hereby moves the Court for an order, pursuant to Sections 105(a) and 554 of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code"), and Rule 6007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtor to abandon its right, title, and interest in, and to, certain real property and all improvements located thereon in favor of First Community Bank (the "Motion"). In support of the Motion the Debtor states as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory basis for the relief requested herein are Sections 105(a) and 554 of the Bankruptcy Code and 6007 of the Bankruptcy Rules.

BACKGROUND

3. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's Chapter 11 Case (the "Chapter 11 Case"). (See Docket No. 1.) The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. The Debtor operates 18 movie theatres with 210 screens in seven states (the "Business"). All theatres are operated from leased facilities with the Debtor not operating any theatres from owned locations. The Business employs approximately 36 full-time employees, and approximately 650 part-time employees (collectively, the "Employees"), at the various theatres. .

5. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and disclosure statement ("Disclosure Statement") and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. (See Docket Nos. 25, 26 and 29.) The proposed Plan provides for payment of all allowed claims in full with interest over five years.

6. Upon emergence and consummation of the Plan, Debtor will be significantly stronger and better able to compete and thrive in the highly competitive theatre/entertainment market.

FACTS PERTINENT TO THIS MOTION

7. In April of 2011, the Debtor entered into a contract for deed (the "Contract for Deed") with Olathe Christian School, Inc. ("OCSI"), whereby the Debtor agreed to sell OCSI certain real property, consisting of six parcels situated along highway K-7 in Kansas (the "Real Property"), along with all improvements (the "Improvements") located thereon (the Real Property and the Improvements are, collectively, the "K-7 Property").¹

8. Since entering into the Contract for Deed, the Contract for Deed remains executory between the Debtor and OCSI.² The K-7 Property serves as collateral for a loan obtained by the Debtor, in favor of First Community Bank ("FCB"), that was most recently amended on July 1, 2010 (the "Loan"). The Loan is secured by, among other things, a mortgage dated June 30, 2006, in favor of FCB, which totally encumbers the K-7 Property (the "Mortgage").

9. The Debtor has determined, in its reasonable business judgment, that retaining any interest in the K-7 Property is no longer necessary for the Debtor to successfully reorganize its Business in this Chapter 11 Case. Specifically, the Debtor has already filed its Lease Rejection Motion, wherein it specifically sought relief to reject its obligations for the Contract for Deed with OCSI. (*See* Docket No. 16.) As a result of the Lease Rejection Motion, the Debtor believes that retaining its interest in the K-7 Property, which is fully encumbered by FCB's Mortgage, is an unnecessary drain on the Debtor's resources as it tries to successfully reorganize its Business in this Chapter 11 Case. For instance, if the Debtor were to retain its interest in the K-7 Property, it would be obligated for not only its obligations required under the

¹Upon information and belief, the Improvements consist of one cell tower, four housing structures, and two commercial buildings.

² On the Petition Date the Debtor filed its *Motion for Order Under Sections 105, (a), 365(a) and 554 Authorizing the Debtor-in-Possession to (A) Reject Certain Unexpired Leases and Executory Contracts, and (B) Abandon Certain Property at the Premises* (the "Lease Rejection Motion"). (*See* Docket No. 16.)

Loan, but also all future real property taxes and insurance obligations which would unnecessarily divert funds away from the Debtor's reorganization efforts. Accordingly, the Debtor has determined, in its sound business judgment, that retaining any interest in the K-7 Property is no longer necessary for a successful reorganization.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks the entry of an order authorizing the Debtor to abandon its right, title, and interest in, and to, the K-7 Property in favor of FCB.

BASIS FOR RELIEF

11. Section 554(a) of the Bankruptcy Code provides "After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. 554(a). "Under the Bankruptcy Code, the trustee may abandon any property that is of inconsequential value and benefit to the estate or burdensome to it." *In re Barowsky*, 102 B.R. 250, 253 (D. Wyo. 1989); *In re Nat'l Smelting of New Jersey, Inc.*, 49 B.R. 1012 (D. Colo. 1985).³ The process for abandonment, under Section 554(a) of the Bankruptcy Code, requires that the debtor give notice of the proposed abandonment under Rule 6007. "The standard for abandonment by the trustee under § 554(a) and Rule 6007 essentially provides that notice and an opportunity for a hearing to be given to all creditors prior to abandonment." *In re Fossey*, 119, B.R. 268, 271 (D. Utah 1990).

12. In this case, the Debtor asserts that its interest in the K-7 Property should be abandoned as retaining the K-7 Property burdens the Debtor and its ability to successfully reorganize under Chapter 11. As set forth above, the Debtor has filed its Lease Rejection Motion as to the Contract for Deed with OCSI. Additionally, the K-7 Property is totally encumbered by

³ As set forth above, no trustee has been appointed in this Chapter 11 Case, and the Debtor is authorized to operate its Business under Section 1108 of the Bankruptcy Code.

FCB's Mortgage. Thus, the K-7 Property has no value and its retention will only further divert necessary resources away from the Debtor's Business thereby hindering the Debtor's ability to successfully reorganize under Chapter 11 of the Bankruptcy Code.

WHEREFORE, for the foregoing reasons, the Debtor respectfully requests this Court enter an Order, which abandons all of the Debtor's right, title and interest in, and to, the K-7 Property in favor of FCB; and granting Debtor such other and further relief as is just and proper under the circumstances of these cases.

Dated: September 24, 2012.

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